IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 290 OF 2003

1. Shri Vaman Bombi Gawade,

2. Shri Kheru Bombi Gawade,

3. Shri Babuso Bombi Gawade,

4. Shri Santosh Bombi Gawade,

5. Shri Ganpat Laxman Gawade,

6. Smt. Shevanti Balu Gawade,

7. Shri Shantaram Balu Gawade,

8. Miss Sharmila Shambu Gawade,
   all of major age, Indian
   Nationals, r/o Sonshi,
   Sattari, Goa. ...Appellants.

Versus

1. Sesa Goa Ltd., represented
   by its Mines Manager, Shri
   Savic Mujumdar, Sonshi Mines,
   Sonshi, Sattari, Goa,

2. V. G. Quenim, represented
   by its Mine Manager, Keni
   Bldg., Dr. Dada Vaidya Rd.,
   Panaji, Goa. ...Respondents.

Shri S. D. Lotlikar, Senior Advocate with Ms. S. Dessai, advocate for the appellants.

Shri R. G. Ramani, advocate for respondent no.1.

Shri Y. V. Nadkarni, advocate for respondent no.2.

CORAM : A. M. KHANWILKAR, J.

DATE : 5th December, 2003.

ORAL ORDER

This Appeal takes exception to the Judgment and Decree passed by the Civil Judge, Senior Division, Bicholim, dated January 24, 2003, in Special Civil Suit No.11/2002/A.

Briefly stated, the said suit was filed by the appellants against the respondents for the following reliefs:-

> (a) that the defendants be ordered and decreed to pay Rs.3,00,000/- by way of damages/compensation for the loss caused to the plaintiffs by destroying the plantation and loss of crops for the year, 1999, 2000 & 2001.
>
> (b) That the defendants, their agents, and servants be restrained by an order of permanent injunction from dumping mining rejects in the suit property.
>
> (c) The defendants be ordered by the order of mandatory injunction to remove all the mining rejects and silt from the suit property and to bring the same to the original state.
>
> (d) Any other relief deemed fit and proper in the circumstances of the case.
>
> (e) Costs of the suit be awarded to the plaintiffs.

2. The respondents filed written statement. One of the contentions taken in the written statement is that the Civil Court has no jurisdiction. On that basis issue no.5, which reads thus, has been struck by the trial Court:-

> "Issue no.5 :- Does the defendants prove that this Court has no jurisdiction to try and entertain this suit?"

Besides the respondents/defendants filed application, Exhibit 18, to decide the said issue as a preliminary issue. Accordingly, the trial Court by the impugned Judgment and Decree proceeded to decide the said issue and answered it

against the appellants; and held that the civil Court had no jurisdiction to entertain the suit. While doing so, the trial Court in paragraphs 9 and 10 of the Judgment has adverted to several aspects which in essence relate to the merits of the rival contentions. Accordingly, as the said issue has been answered in favour of the respondents, the suit stood dismissed. In the operative Order the trial Court has, however, adverted to the provisions of Order VII Rule 11 of the Civil Procedure Code, while dismissing the suit. This decision is the subject-matter of challenge in the present Appeal.

The principal question that arises for my consideration is: Whether the Civil Judge before whom the suit was filed for the aforesaid reliefs at the instance of the appellants, had no jurisdiction to try and entertain the suit?

3. On analysing the reasons recorded by the Court below in paragraphs 9 and 10, as mentioned earlier, it is seen that the Court below has adverted to the merits of the contentions. Whereas, the trial Court has overlooked the main grievance of the appellants that one of the issue that arises for consideration is whether the disputed area is a part of the lease deed. It is only if the disputed area were to be part of the lease deed, would the question of jurisdiction of the civil Court to consider the relief in

terms of prayer clause (a) above arise and not otherwise. Moreover, insofar as the other reliefs are concerned, it cannot be disputed that there is no specific provision either in the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act of 1957 ") and the Mineral Concession Rules, 1960 framed thereunder enabling the authority to grant such reliefs. Indeed if the plaint was to be dismissed only by virtue of the provisions of Order VII Rule 11 of the Civil Procedure Code, the limited aspect that ought to have been considered was whether from the averments in the plaint it can be said that the suit was barred by any law.

4. In the present case, although the trial Court has adverted to the provisions of Order VII Rule 11 of the Civil Procedure Code, but in essence it has proceeded to decide the preliminary issue of jurisdiction as framed in the form of issue no.5.

5. According to the respondents, there is no infirmity in the view taken by the trial Court that by virtue of the provisions of Section 24-A of the Act of 1957 and Rule 72 of the Rules framed under the said Act, the civil Court will have no jurisdiction to consider the claim of compensation, which could be adjudicated and granted only by the State Government, for which reason there would be implied exclusion of the jurisdiction of the civil Court to grant

relief at least in terms of prayer clause (a). The learned counsel for respondent no.2 has placed reliance on the decisions of the Supreme Court reported in 2002 AIR SCW 710 in the case of **Chandrakant Tukaram Nikam & Ors. vs. Municipal Corporation of Ahmedabad & Anr.** and another decision reported in (1997) 5 SCC 536, in the case of **Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.,** para 23, to buttress the above contention. Learned counsel for respondent no.1 while supporting the view taken by the trial Court has placed reliance only on the averments in paragraph 9 of the suit, which reads thus:-

> "9. The plaintiffs say that the defendants mining companies being financially strong are not in a mood of responding to their request for paying them compensation for the damages and loss of crop and are also not bothered to remove the mining rejects dumped in the suit property nor defendants have taken any steps to remove the mining silt accumulated therein inspite of repeated requests of the plaintiffs."

6. However, on reading the above averments in the plaint and after considering the rival submissions, I have no hesitation in taking the view that from the averments in paragraph 9 simpliciter, it is not possible to take the view that the said issue cannot be considered by the civil Court, or for that matter, the suit will be barred by any law. Indeed counsel for the respondents has placed reliance on Section 24 A of the Act of 1957 and Rule 72 of the Mineral Concession Rules, 1960, framed thereunder, which contention would, at best, entitle the respondents to question the

jurisdiction of the civil Court to grant relief in terms of prayer clause (a) only, provided, however, the disputed area of the suit property was to be part of the lease deed governed by the provisions of the Act. In that sense, it is not possible to suggest that the entire suit, much less the other reliefs claimed in the suit, are barred by any law, or that the civil Court had no jurisdiction to try and decide the same. Moreover, as mentioned earlier, the core issue that has been raised and is a matter of dispute between the parties, i.e. whether the disputed property forms part of the lease deed. It is only if the property forms part of the lease deed to be governed by the provisions of the Act, that it will be possible to suggest that the civil Court will not be competent to grant claim of compensation in terms of prayer clause (a), for that authority is expressly vested in the State Government by virtue of Section 24 A of the Act of 1957, which provides complete mechanism for adjudicating the said issue and for which reason there is implied exclusion of the jurisdiction of the civil Court. However, whether the disputed area forms part of the lease deed or not, is a matter which is a triable issue by the civil Court and it is only when the said issue is answered against the appellants/plaintiffs that the question of not granting relief in terms of prayer clause (a) in view of the bar of jurisdiction of the civil Court, would become relevant. In other words, the stage at which the trial Court has dismissed the entire suit holding that it had no jurisdiction is

inappropriate and cannot be sustained.

7. Accordingly, the reasons recorded by the trial Court in the impugned Judgment are set aside and the suit is restored to the file of the trial Court for deciding the same on its own merits in accordance with law. It is made clear that any observations made in this judgment should not be understood to be expression of any opinion one way or the other, on the merits of the rival contentions. The trial Court to decide the suit on merits, in accordance with law. Parties to appear before the trial Court on 8th January, 2004 at 10 a.m.

It is clarified that the issue of jurisdiction as framed, i.e. issue no.5, will have to be examined by the trial Court afresh alongwith other issues at the end of the trial. All contentions in that behalf are left open.

Appeal allowed on the above terms with no order as to costs.

A. M. KHANWILKAR, J.

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